

CHAPTER 7
MEMORANDA OF UNDERSTANDING
§§7.101-7.104, 7.110
Effective July 22, 1997

§7.101. Memorandum of Understanding Between the Texas Department of Commerce and the Texas Natural Resource Conservation Commission.

(a) Need for agreement. Texas Health and Safety Code, §382.0365(e) directs the Texas Natural Resource Conservation Commission (TNRCC) to enter into a Memorandum of Understanding (MOU) with the Texas Department of Commerce (TDOC) to coordinate assistance to any small business applying for permits from the commission. Texas Government Code, §481.028(b)(6) directs the TDOC to develop an MOU with the TNRCC to cooperate in program planning and budgeting regarding small business finance and permits, the marketing of recyclable products, and business permits.

(b) Responsibilities.

(1) The TNRCC:

(A) is the agency of the state given primary responsibility for implementing the Constitution and laws of this state relating to the conservation of natural resources and the protection of the environment;

(B) sets standards, criteria, levels, and limits for pollution to protect the air and water quality of the state's natural resources and the health and safety of the state's citizens;

(C) protects the air, land, and water resources through the development, implementation, and enforcement of control programs as necessary to satisfy all federal and state environmental laws and regulations;

(D) maintains a Small Business Assistance Program as defined in Texas Health and Safety Code, §382.0365;

(E) establishes programs designed to encourage Texas businesses to reduce, reuse, and recycle industrial and hazardous wastes; and

(F) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(2) The TDOC:

(A) is the state agency designated to promote economic development and tourism and provide business services for small business owners;

(B) serves as an information center and referral agency for information on various state and federal programs affecting small businesses, including local governments, local economic development organizations, and small business development centers to promote business development in the state;

(C) supports small business ownership and development for the state;

(D) collects, publishes, and disseminates information useful to small businesses, including data on employment and business activities and trends; and

(E) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(c) Activities.

(1) The TNRCC will, in a timely manner:

(A) refer small business owners to the TDOC for information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(B) provide the TDOC with information regarding environmental permitting processes, registration timelines, fee schedules, reporting requirements, pollution prevention techniques; as well as scheduled workshops, seminars, and conferences that educate small businesses on environmental concerns;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TDOC;

(D) maintain current information supplied by the TDOC on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(E) research the requirements and costs of pollution control equipment and environmental audits needed by small businesses for compliance with environmental regulations;

(F) train TDOC staff, as requested and subject to staff availability, on environmental regulations, environmental management techniques, and pollution prevention and recycling practices that apply to small businesses;

(G) share information with the TDOC to ensure non-duplication of agency efforts;

(H) provide the necessary permit applications and forms to the TDOC, upon request, so that the TDOC may complete a comprehensive application request by a business; and

(I) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TDOC any report required by Texas Government Code, §481.129.

(2) The TDOC will, in a timely manner:

(A) refer small business owners and prospective owners to the TNRCC Small Business Assistance Program for help with environmental permitting, registration, compliance, and reporting requirements and pollution prevention techniques;

(B) provide information to the TNRCC regarding information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TNRCC;

(D) maintain current information supplied by the TNRCC on the application process and timelines for environmental permits, registrations, certifications, or other general environmental compliance information needed to operate a place of business in Texas;

(E) incorporate the TNRCC information concerning businesses' rights, obligations, and requirements under environmental regulations into the general material distributed by the TDOC to people establishing business operations in Texas;

(F) identify and provide information to the TNRCC on financial assistance programs that make loans to small businesses for the purchase of new equipment or process upgrades necessary to operate in compliance with environmental regulations;

(G) serve as a point of contact, when requested, between the TNRCC and the Small Business Administration, Farmers Home Administration, the Small Business Development Centers, the Texas Manufacturing Assistance Centers, Community Development Corporations, and other business and financial assistance programs;

(H) maintain the information produced by the TNRCC about the impacts of environmental regulations on the state's economy and small business community;

(I) share information with the TNRCC to ensure non-duplication of agency efforts;
and

(J) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TNRCC any report required by Texas Government Code, §481.129.

(d) Review of MOU. This memorandum shall terminate August 31, 1999, unless extended by mutual agreement. The TNRCC and the TDOC by rule shall adopt the memorandum and all revisions to the memorandum.

Adopted July 10, 1996

Effective August 5, 1996

§7.102. Adoption of Memoranda of Understanding between The Texas State Soil and Water Conservation Board and The Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and

(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and

(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and

(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and

(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and

(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and

(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and

(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and

(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The Texas Natural Resource Conservation Commission agrees to:

(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.

(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.

(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.

(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.

(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.

(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.

(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.

(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations), other than those covered by subsection (c)(12) of this section.

(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified water quality management plan, the commission will send the board all pertinent documentation within five (5) working days of the investigation.

(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.

(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (c)(10) of this section.

(c) The Texas State Soil and Water Conservation Board agrees to:

(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.

(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in writing on any decision made that results in a change in the programmatic or financial status of a project.

(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.

(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.

(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.

(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.

(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.

(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include,

but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.

(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.

(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.

(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.

(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.

(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five (5) working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.

(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within ninety (90) days of the date their request for planning assistance was approved by the Soil and Water Conservation District.

(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.

(d) Both parties agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.

(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.

(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.

(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.

(5) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(6) Meet semi-annually to review and discuss the state's NPS water quality program and to refine agency coordination mechanisms.

(7) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.

(8) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.

(9) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water".

(e) General conditions:

(1) Term of MOU. The term of this MOU shall be from the effective date until termination.

(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of

1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted May 14, 1997

Effective June 9, 1997

§7.103. Memorandum of Understanding (MOU) Between the Texas Natural Resource Conservation Commission (commission) and the Texas Parks and Wildlife Department (TPWD).

(a) Need for agreement.

(1) Both the commission and the TPWD seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The commission and TPWD are concerned about issues relating to the raising of non-native aquatic species and the attendant concern about escapement into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The commission and TPWD are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays and estuaries.

(4) The commission and TPWD seek to establish an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The commission and TPWD seek to institute an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Section 5.104 of the Texas Water Code authorizes the commission to enter into a memorandum of understanding with any other state agency.

(7) It is the intention of this MOU to provide a formal mechanism by which TPWD may review and provide feedback on aquaculture issues that are subject to regulation by the commission and that have the potential to affect natural resources within the jurisdiction of TPWD. This exchange of information

would assist the commission in making environmentally sound decisions, and would improve coordination between the commission and TPWD.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

(1) Aquaculture - The business of producing or rearing aquatic species (fish, crustaceans, and other organisms in either fresh or marine waters) utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) Memorandum of Understanding (MOU) - A formal document that clarifies and provides for the respective duties, responsibilities or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.

(c) Responsibilities.

(1) The commission. The responsibilities of the commission relate primarily to its role as the natural resource agency with primary responsibility over conservation of natural resources and the protection of the environment, pursuant to §5.012 of the Texas Water Code.

(A) The commission has general jurisdiction over the state's water quality program including issuance of waste discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits.

(B) The commission seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The commission is responsible for review of applications and subsequent issuance of waste discharge permits, temporary orders, emergency orders, and registrations for authorization by rule.

(2) TPWD. The responsibilities of TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by §12.001 of the Parks and Wildlife Code.

(A) TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) TPWD regulates the taking, possession and conservation of all kinds of marine life and other aquatic life.

(E) TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, pursuant to §66.015(b) of the Texas Parks and Wildlife Code.

(F) TPWD regulates the importation, possession and placing into state water of harmful or potentially harmful exotic species of fish, shellfish or aquatic plants, pursuant to §66.007(a) of the Texas Parks and Wildlife Code.

(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession and placing into state water of harmful or potentially harmful exotic species of fish, shellfish or aquatic plants, pursuant to §66.007(a) of the Texas Parks and Wildlife Code.

(d) Provisions. This MOU is to facilitate the coordination and collaboration between the commission and TPWD with regard to aquaculture facilities.

(1) The executive director will provide notification to TPWD of each application received which requests authorization for the discharge or disposal of wastewater from aquaculture facilities. Notification shall be mailed within 14 days of the stamped date of receipt. Notification shall contain basic information on the proposed operation, including facility location, name(s) of receiving water body, proposed flow rate and other similar descriptive information so that TPWD may complete an initial assessment of the proposed operation. Within 30 days of the date of transmittal of notification, unless additional information is required, TPWD will complete its initial assessment and;

(A) provide the executive director with recommendations designed to protect fish and wildlife resources, or

(B) indicate that it has no comments. If no comments are received within 30 days, the executive director will conclude that there are no comments and continue its normal processing of the application.

(2) Upon receipt of a request by TPWD for additional information, the executive director will immediately provide such information so long as it is contained in the application materials. If additional information is not included in the application materials, and the information is necessary for TPWD to make its evaluation, the executive director will request such additional information from the applicant and provide it to TPWD as it becomes available. If no information is forthcoming from the applicant, the executive director will determine whether the application is technically sufficient without such information. The executive director may then either file the application and draft permit with the Office of Chief Clerk within the processing time frames identified in agency rules or, in the event that the executive director determines that this additional information is essential to complete its technical review, determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(3) Upon receipt of additional information from the executive director, TPWD will have 30 days to complete its review and either make its final recommendations or indicate that it has no comments. If nothing is received within 30 days, the executive director will conclude that there are no comments and continue its normal processing of the application.

(4) The scope of review by TPWD may include, but is not limited to: consideration of especially sensitive receiving water conditions (aquatic habitat), impacts of the discharge on substrate (scouring, sedimentation) and water transparency, alteration of receiving water flow characteristics, existing or attainable biological and recreational uses, discharge rate and volume, and the likelihood of disease transmission.

(5) Comments received from TPWD will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent with the commission's responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making its preliminary recommendation regarding an application, the executive director will provide a response to TPWD that contains a copy of the draft permit, draft order, or final decision on an exemption or registration, and documentation providing an explanation for any of TPWD's comments that were not incorporated.

(6) A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(7) An interagency work group will be formed whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission and TPWD activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agency of any changes to the primary contact person.

(8) The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of the activity noted above will be communicated to the appropriate office at the other agency at least five days prior or as soon as is practicable. TPWD will notify the appropriate commission Regional Office and Wastewater Permits Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.

(9) The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be

communicated to the appropriate office of the other agency at least five days beforehand. Notification of other activities will be communicated as soon as practicable. TPWD will notify the commission Regional Office and the executive director will notify TPWD Resource Protection Regional Office.

(e) General conditions.

(1) The term of this MOU shall be from the effective date until termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties and shall be adopted by rule by both parties.

(2) Each party shall adopt by rule the MOU. All amendments shall also be adopted by rule. This MOU, and any subsequent amendment, shall become effective 20 days after the date on which the rule is filed in the office of the Secretary of State.

(3) By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.

(4) Any party may terminate this MOU so long as it provides notice in writing to the other party 90 days in advance of the termination.

Adopted June 25, 1997

Effective July 22, 1997

§7.104. Memorandum of Understanding Between the Texas Water Development Board and the Texas Natural Resource Conservation Commission.

The commission adopts by reference the rules of the Texas Water Development Board in 31 TAC §371.5 (relating to Memorandum of Understanding between Texas Water Development Board and Texas Natural Resource Conservation Commission).

Adopted June 25, 1997

Effective July 22, 1997

§7.110. Memorandum of Understanding Between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Public Safety (department).

(a) Need for agreement.

(1) Executive Order GWB 96-1, authorized by Senate Bill 178 (Chapter 34, Acts of the 74th Legislature, Regular Session, 1995), directs the commission to enter into an agreement with the department to provide for the establishment of an Inspection/Maintenance (I/M) program in accordance with Executive Order GWB 96-1, the Texas Clean Air Act (TCAA), and federal regulations.

(2) The commission and the department have agreed to develop this Memorandum of Understanding between these agencies. This agreement will supplement any previous Memoranda of Understanding between these two agencies or including these two agencies as participating parties.

(3) The agencies entering into this Memorandum of Understanding are establishing a formal mechanism by which they will coordinate I/M program planning, implementation, oversight, evaluation, and areas of primary responsibility. This Memorandum of Understanding also provides for a system by which information developed by the commission and the department may be exchanged for the benefit of the I/M program.

(b) Definitions. Unless specifically defined in the TCAA, 37 Texas Administrative Code §23.93 relating to Vehicle Emissions Inspection Requirements, the department “Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors”, 30 Texas Administrative Code §114.3 relating to Vehicle Emissions Inspection Requirements, or in other rules of the commission or the department, the terms used in this Memorandum of Understanding shall have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection unless the context clearly indicates otherwise.

(c) Responsibilities.

(1) The commission:

- (A) is the state agency responsible for conservation of natural resources;
- (B) is the principal state authority on matters relating to the state’s air quality; and
- (C) shall have authority to make rules for the I/M program on matters that relate

directly to:

- (i) emissions reduction credits awarded by the United States Environmental Protection Agency (EPA);
- (ii) computer modeling of the emissions reduction credits available to the Texas I/M Program;
- (iii) data collection efforts required by 40 CFR Part 51 or the Texas I/M State Implementation Plan (SIP); and
- (iv) responsibilities of the commission identified in this agreement.

(2) The department:

- (A) is the state agency responsible for the safety of the motoring public;
- (B) is the principal authority on matters relating to testing motor vehicles for safety and emissions compliance; and
- (C) shall have authority to make rules for the implementation and operation of the I/M program.

(3) Both agencies agree to comply with the provisions of the Texas I/M SIP, including the most recent proposed revision signed by the Governor and submitted to the EPA on June 21, 1996, and the provisions of Executive Order GWB 96-1.

(4) It is neither the department's nor the commission's intention to direct the other agency's activities by rule or otherwise.

(d) Activities.

(1) In consultation with the department, the commission will:

(A) develop and design an I/M program for the State of Texas that satisfies the requirements of the Federal Clean Air Act and 40 CFR Part 51, Executive Order GWB 96-1 and other relevant legislation, including any amendments made to these requirements;

(B) develop, update, and amend the Texas I/M SIP and program rules as necessary to support state and federal requirements;

(C) evaluate the Texas I/M Program;

(D) develop criteria for emissions testing equipment required for use in emissions testing facilities;

(E) serve as the state's liaison with the EPA;

(F) provide the department with timely reports and data analysis as requested; and

(G) set fees for the Texas I/M Program by rule.

(2) In consultation with the commission, the department will:

(A) implement the Texas Motorist's Choice Program, including the adoption of necessary rules and procedures;

(B) actively enforce the Texas Motorist's Choice Program;

(C) serve as the state's liaison with participating emissions testing facilities;

(D) license emissions testing facilities;

(E) provide the commission with timely reports and data analysis as requested;

(F) implement Repair Effectiveness provisions of the Texas I/M SIP; and

(G) collect emissions testing and other applicable fees for the Texas Motorist's Choice Program.

(3) In order for both agencies to fulfill their respective program responsibilities, both agencies agree:

(A) to share information necessary for maintaining program effectiveness, quality, and approvability by the EPA;

(B) to allow the EPA to audit their program records;

(C) to jointly determine, within 60 days of the effective date of this Memorandum of Understanding, a list of information to be shared along with a schedule and acceptable format for its provision. This list may be amended by mutual agreement of the agencies.

(D) to consult on an appropriate course of action if an analysis of program data indicates that the Texas Motorist's Choice Program is not meeting commitments made in the Texas I/M SIP. Consultation requests may be made by the program director in either agency.

(e) Dispute resolution. In the event that the commission and the department are not able to decide on a mutually agreeable plan of action with regard to the terms of this agreement, each agency shall inform the other of its concerns, in writing, and make a good faith effort to address the major concerns of the other party.

(f) Reviews of and changes to the Memorandum of Understanding.

(1) This Memorandum of Understanding shall be reviewed and updated, at a minimum, every fifth year from its effective date. Either party may suggest amendments when it feels such changes are warranted.

(2) If a change in state or federal law or a change in the Texas SIP necessitates a change in this Memorandum of Understanding, then both the Director of the Mobile Source Division of the commission and the Director of the Vehicle Inspection and Emissions program of the department or their respective staffs will meet to work out a mutually agreeable amendment to the Memorandum of Understanding. If such an amendment is not possible, then either party may require dispute resolution under subsection (e) of this section.

(3) This Memorandum of Understanding may be terminated by either agency upon at least 30 days written notice.

Adopted November 20, 1996

Effective December 13, 1996